IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12296 of 2002
AND
SPECIAL CIVIL APPLICATION No 12357 of 2002

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHANJI NAGJI VAGADIYA

Versus

STATE OF GUJARAT & ORS.

Appearance:

1. Special Civil Application No. 12296 of 2002

MRS SANGEETA PAHWA for M/S THAKKAR ASSOC. for the Petitioner
MR DIPEN DESAI, AGP for Respondent No. 1-2
MR VC VAGHELA for Respondent No. 3

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 04/08/2004

COMMON ORAL JUDGEMENT

Heard the learned advocates.

The petitioner in each petition is the former employee of the respondent No.3 - Agriculture Produce Market Committee, Jamnagar (hereinafter referred to as 'the Market Committee'). Feeling aggrieved by the action of the Market Committee in relieving the petitioners from service under the pretext that the petitioners had resigned from service, the petitioners have preferred the present petitions.

It is the claim of the petitioners that on 23rd March, 2002 the petitioners were forced to submit resignation. On 28th March, 2002 both the petitioners gave application informing the Chairman of the Market Committee and the President of the Staff Sub Committee that the resignation dated 23rd March, 2002 were tendered by them under coercion and that they intended to withdraw the same. The said applications were accepted by the Chairman and an endorsement was made that the resignation tendered by each petitioner was not accepted. Since then, the petitioners continued in service until November, 2002. By impugned orders dated 1st November, 2002 the petitioners were informed that pursuant to the oral request made by them the resignation tendered by them on 23rd March, 2002 were accepted and that they shall stand relieved from service from 1st November, 2002. Therefore, the present petitions.

Learned advocate Mrs.Pahwa has submitted that the petitioners, having made representations on 28th March, 2002; the said representations having been accepted by the Chairman and the resignations dated 23rd March, 2002 having been rejected, the petitioners could not have been relieved from service under the guise of accepting the said resignations dated 23rd March, 2002. She has submitted that no oral request was made by the petitioners as stated in the impugned orders dated 1st November, 2002.

In answer to the petition, the Market Committee has contested the petitions. Learned advocate Mr.Vaghela has submitted that the Chairman who accepted the letters dated 28th March, 2002 was not in office on the said date. He has further submitted that the resignations dated 23rd March, 2002 tendered by the petitioners were received by the Market Committee on 1st April, 2002 and, on request made by the petitioners, were accepted by the Market Committee by impugned orders dated 1st November,

2002.

The statements made in the counter affidavit and the submissions made by Mr.Vaghela are not supported by evidence. It is not stated who the Chairman was who accepted the representations dated 28th March, 2002 and when did he cease to be the Chairman of the Market Committee. There is no record of petitioners' making representations to accept the resignations dated 23rd March, 2002.

In above view of the matter, the action of the Market Committee in relieving the petitioners from service under the guise of acceptance of the resignations given on 23rd March, 2002 is not sustainable. Both the petitions are allowed. The impugned orders dated 1st November, 2002 are quashed and set aside. The petitioners are ordered to be reinstated in service forthwith.

On reinstatement in service, the petitioners shall be entitled to continuity of service. However, the period from the date they were relieved from service till the date, the petitioners shall not be entitled to receive the salary on the principle of "no work no pay". The petitioners shall be entitled to receive the salary with effect from 5th August, 2004. The petitioners shall be entitled to damages to the extent of Rs.15,000=00 each. The petitioners shall also be entitled to cost of this petition. The cost to each petitioner is quantified at Rs.3,000=00. Such cost shall be borne by the respondent No.3 - Market Committee. The respondents shall bear their own cost.

Rule in each petition is made absolute in the above terms. Registry shall maintain copy of this order in each petiton.

(Ms. R.M.Doshit, J.)

/sakkaf